Refugee Crisis in Europe and Selective Solidarity

Dr. Irene Ortiz

Universidad Autónoma de Madrid

Abstract: This article aims to examine the so-called crisis of solidarity in Europe and the unequal treatment of migrants and asylum seekers in the last ten years. To this end, a study of the legal formulation of the 1949 Geneva Convention and of refugee status is proposed to allow understanding some of the central issues that have legitimized the exclusion of some asylum seekers. In addition, data from recent years of asylum seekers and migrants in Europe are presented through maritime routes that allow the analysis of Europe's responses. Through a comparison with the response that the European Union has given jointly to the forcibly displaced persons who have had to flee from Ukraine, the possibilities for a reformulation of the right to hospitality and refugee status will be examined. Finally, the article tries to find some new horizons on which to work so that the right to hospitality is a universal right, which does not depend on the prerogative of the States that can choose and decide which subjects are legitimate to enjoy it. In a nutshell, it is about thinking of new formulas of hospitality and refuge for a new Europe.

Key words: Refugees; Migrants; Solidarity; Theory of justice

I.   Introduction

After the Russian invasion on February 24, 2022, we are faced with at least 24,000 deaths and, according to UCHNR (United Nations High Commissioner for Refugees), more than 4 million refugees. Europe has been resolute, agile, with an unusual speed, unknown in recent years, when it comes to offering shelter and means to people displaced by war. In the case of Spain, for example, the government urgently approved a law that allowed people from Ukraine to be granted residence permits within 24 hours. Several organizations that work with refugees and migrants have stressed the need to extend this type of measure to other people displaced by other war contexts.

However, before analyzing the crisis of solidarity in the European framework, I would like to dwell on some legal particularities regarding refugee status and the right to hospitality. Talking about solidarity in the European migratory context forces us to take into account some data on migration in the last ten years, to understand how refugee status is formulated and to think about whether it is possible to reformulate European policies in this area.

II.   Contemporary challenges

The legal formulation of the right of asylum appears in Geneva Convention in 1949, after the end of the World War II. Specifically, articles 32 and 33 were heavily influenced by Kant's non-refoulement. In his book, *Perpetual Peace: A philosophical sketch*, Kant underlines

the idea that "hospitality means the right of a stranger not to be treated as an enemy when he arrives in the land of another. One may refuse to receive him when this can be done without causing his destruction; but so long as he peacefully occupies his place, one may not treat him with hostility" (Kant, 1998, p. 27). In Benhabib´s reference to Kant, there is one right that belongs to a human being as a

human being in the world community, and that is the right to hospitality (2004, p. 21). That is, if someone comes upon your shores through need or for commerce or barter, and if their purposes are peaceful, you cannot deny them access. You cannot deny universal hospitality, particularly if it will mean their destruction. Therefore, the right to universal hospitality, that is, the right of human beings to seek contact with one another, to seek access to each other's land, to seek access to resources is a fundamental human right.

However, we know that even though this principle binds the signatory states not to forcibly return registrars and asylum seekers to their countries of origin if this poses a clear danger to their lives and/or their families, states manipulate this principle at their pleasure. A sovereign state can manipulate this article to define life and freedom narrowly when it serves its purposes, but it is also possible to circumvent the no- expulsion clause by depositing refugees and asylum seekers in so-called third countries. Those subjects need an explicit recognition by the state that they are "rightful" subjects who should be allowed to participate in political practices and, ultimately, to participate in the social and political life of the territory they inhabit. In Spain, in order to be granted citizenship and vote, one needs proof of ten years of permanent residency or five years as a refugee. To acquire residency, one needs economic resources; according to the Law of Entrepreneurs (*Ley de Emprendedores*), residency is given to someone who makes a significant capital investment of a value equal to or greater than two million euros, or someone who acquires real estate in Spain with an investment value equal to or greater than five hundred thousand euros. If one does not have money to do that, he or she needs to have been living in Spain without legal permission for more than three years, and then request the state's permission through what is known as "rooting." During those three years, migrants have to avoid police controls that could identify them as people without legal status. In addition, Spanish legislation provides the means to grant the right of residence due to compelling circumstances such as humanitarian reasons, e.g., for being victims of gender violence or human trafficking. However, each country sets its own asylum requirements as to what constitutes humanitarian reasons. That means that, at the end of the day, each state has its own sovereignty to accept or reject asylum seekers.

As verified in Europe, recognizing someone as a refugee is, and was always, a question of political will. Now, the invasion of Russian troops in Ukraine and its dramatic results in terms of death, displacement of people, etc. is not new for Europe. Allow me to clarify and present some data that will be useful to understand why Europe's politics towards migration and refugees reveal its solidarity crisis.

III.   Other crises

According to the document prepared by UNHCR on access routes to Europe, arrivals in 2018 increased by 131% compared to 2017 in Spain (UNHCR, 2019a, p. 8). If 28,300 people arrived in Spain in 2017, in 2018 65,400 did, of which 58,600 arrived in Spanish territory by sea compared to 6,800 who did so by land (UNHCR, 2019a, p. 8). These data make Spain the country of the European Union that received the most immigration in 2018, compared to Italy with 23,400 and Greece with 50,500, where the data of entry by sea and land vary significantly with respect to the Spanish case, with 32,500 people They arrived by sea and 18,000 by land to the Greek State (UNHCR, 2019b). According to the same report prepared by UNHCR, Spain became the main point of entry by sea:"in the first half of the year, more people entered Europe through Greece than through Italy or Spain, due in part to the increase in the number people who crossed the land border with Turkey compared to 2017" (UNHCR, 2019a, p. 9).

The Eastern Mediterranean route is the sea crossing between Turkey and Greece. According to the Council of Europe, in 2015 a large number of refugees fleeing the war in Syria arrived in the European Union. After the cooperation agreement signed between the EU and Turkey, the number of irregular arrivals was considerably reduced. This agreement signed in March 2016 managed to reduce inflows by 90% in relation to 2015. The cooperation agreement recognizes a delivery of operating funds of 4.7 billion euros, divided into two tranches: the first until mid-2021 with a disbursement of 3.2 billion and the second until 2025 when the rest of the economic allocation is expected to be disbursed (European Council, 2020b).

Despite the data offered by the European Council, UNICEF warns that the Eastern Mediterranean route may become the most dangerous. According to the United Nations agency, "young people from sub-Saharan African countries are more exposed to exploitation and trafficking. On the Eastern Mediterranean route, the risk for these adolescents is 4 times greater than for the rest" (UNICEF, 2020). If we take the case of Cyprus as an example, in 2018 alone this country received almost 7,800 new asylum applications (UNHCR, 2019a, p. 11). These data represent a challenge for European countries when it comes to respecting international law and evaluating asylum applications and, if granted, offering the legal conditions provided for in these cases. We will dwell on this issue later.

The data offered by the agency created by the EU for border control, FRONTEX, accounts for this reduction on its website. Thus, if in 2015 they counted the illegal entry of 885,386 people, in 2016 the entries were reduced to 182,277 and, finally, fell to 42,319 in 2017, rising again slightly in 2018 to 56,561 (FRONTEX, 2020a). However, it should be remembered that these are the data of the people that FRONTEX agents intercepted during the years indicated, not the total number of people who entered. In this way, FRONTEX accounts for the number of people who crossed this route in 2020 at 18,490.

The western Mediterranean route is the access route to Spain. Of all the people who arrive in Europe by different routes, sea and land, that of the western Mediterranean only represents 10% of the total (UNHCR, 2019a, p. 9). However, when it comes to sea routes, it went from being the least crowded in 2017, with 28,300 people, to 65,400 in 2018, which put it at the top of the sea routes. Certainly, this route, which grew dramatically in 2018, also did so in the number of deaths, practically quadrupling (UNHCR, 2019a, p. 14). For its part, the Ministry of the Interior estimated that 57,498 people arrived by sea to Spain in 2018, mostly through the route of the Alborán Sea and the Strait. The Moroccan government said that in 2018 it intercepted 89,000 people trying to cross into Europe, 30,000 of them by sea. In terms of origin, according to this same government, "80% came from third countries and 20% were Moroccan nationals" (Caminando Fronteras, 2019, p. 27). However, in these data offered by the Ministry of the Interior, the people who died or disappeared during the crossing are not included. As stated in the Walking Borders report, "this loss of life has not served the States to develop restoration and memory policies, but on the contrary, their deaths have been used to request more investment in control and, paradoxically, initiate measures aimed at reducing rescue services" (Caminando Fronteras, 2019, p. 28).

On the other hand, if we look at the most recent data on the number of deaths on this route, they are certainly disparate: while Missing Migrants puts the number at 706 victims, the NGO Walking Borders raises the number to 2,170, of which 1,851 correspond to the Canary Islands route (Walking Borders, 2020). According to the data offered by this institution, "the Canarian route has a mortality rate of 32.1%, that is, three out of every ten people who cross the Atlantic route die" (Vargas, 2019). Due to the nature of our work, we cannot address all the causes that have caused an increase in the number of migrants who have embarked, risking their lives to reach Spanish coasts. However, it is necessary to emphasize that these data cannot be studied without taking into account, for example, the coup in Mali and the economic crises that have impacted African countries with more tourism, such as Senegal, as a result of the Covid-19 pandemic (Vargas, 2019). As far as land routes are concerned, they are no less dangerous. In the case of the borders with Spain, reports indicate that between Morocco and the Spanish enclaves of Ceuta and Melilla "there were at least six deaths, four of them during or after attempts to jump the fence" (UNHCR, 2019a, p. 15).

According to FRONTEX, in general numbers, on the western Mediterranean route, by sea and by land, a total of 15,864 people was intercepted by the guards of this agency.

As we have seen, the data offered by various United Nations agencies and different organizations that work in cross-border fields are certainly alarming. The creation of FRONTEX and the recognition of the expansion of the Libyan SAR zone represented a heavy blow to the rights of migrants. It is worth remembering that article 13.2 of the Universal Declaration of Human Rights (1948) recognizes that: "everyone has the right to leave any country, including his own, and to return to his country". Of course, it could be argued that the right to enter another

territory does not explicitly appear in human rights, however, what does the right to leave mean if there is no right to enter and there is no one's land? If there is the right to leave and there are no no-man's lands,the only way to recognize and make that right operational is to understand that there isan implicit and intrinsic right to enter another territory.

On the other hand, regarding the need to offer protection to migrants in transit, the Treaty on the Functioning of the European Union (TFEU) itself states in its article 78.2.c that the measures related to a common European asylum system that include "a common system for the temporary protection of displaced persons in the event of a mass influx". On how this should be done so that the entire step of protection does notfall on the bordering countries, article 80 of the same Treaty states: "The Union policiesmentioned in this chapter and their execution shall be governed by the principle of solidarity and equitable distribution of responsibility between the Member States, alsoin the financial aspect". In this sense, we should ask ourselves if the data that we havepreviously exposed on the maritime access routes to the different countries of the European Union that act as border countries are offering the temporary protection that appears in the TFEU.

The elimination of internal borders between European States was developed from the Schengen Agreement (1995). The Maastricht Treaty (1992) established the first formalstructure on the legal requirements for international migrations whose destination was the countries that were part of the European Union. In this sense, this moment can be understood as the seed that allowed the initiation of a common visa policy among European countries. In addition, the Maastricht Treaty established three pillars that allow a better understanding of the EU's cooperative relationship with third countries. The pillars were: first, the community; secondly, the Common Foreign and Security Policy (CFSP) and finally the Cooperation in Justice and Home Affairs (CJAI). The latter is the one that includes matters related to migration and asylum. On the other hand, the Treaty of Amsterdam (1997) created the Area of Freedom, Security and Justice (ELSJ) which introduced policies of control and cooperation with third countries in matters of migration and border management (Estrada and Fuentes-Lara, 2020). This Treaty is the one that allows the transfer of powers of control of external borders, migration and asylum to the first pillar, the community, to make the decisionsof the EU in these areas binding for all Member States. Two years later, in 1999, the minutes of the Tampere European Council defined that:

> "The Union must develop common asylum and immigration policies, while taking into account the need to carry out coherent control of the external borders to put an end to illegal immigration and to combat those who organize it and commit crimes International Relations (1999, p. 2)."

What is reflected in these minutes is what has subsequently allowed cooperation with third countries to control flows and adopt security measures. From that moment on, "the migration policies of the EU focused on the control and criminalization of the undocumented

migrant (Estrada & Fuentes-Lara, 2020, p. 222). In this sense, we could say that, although the creation of the Schengen zone supposes a liberation of the internal borders, it had repercussions in the hardening of the external ones.

Fortress Europe or European fortress is a concept that helps us understand the EU's border policies and describe the current functioning of the European migratory regime (Mezzadra, 2005). What we propose to examine in the following pages are the consequences of this bordering, of the diversion of responsibilities to third countries and of the regularization processes that Spain has to have to welcome the immigrant population.

Since 2015, we have been talking about asylum applications and refugees, and it seems that in the political debate there has been an attempt to draw a line between asylum seekers and migrants in an irregular situation. However, the data tells us something else: in 2020, of the 116,000 applications for international protection, the Ministry of the Interior resolved favorably on 5%, which caused the remaining 95% to remain in a situation of supervening administrative irregularity (Caritas, 2020).

On the other hand, we should ask ourselves: who are these people who are in an irregular administrative situation? Well, four out of five immigrants in an irregular administrative situation come from Central and South America, 9.2% (around 43,000) come from African countries, of which more than half come from a single country, Morocco (Fanjul & Gálvez-Iniesta, 2020). In addition, four out of five immigrants in an irregular administrative situation are under 40 years of age. Seven out of ten male irregular immigrants are under 30 years of age.

As can be seen from the data presented so far, especially those offered by organizations on deaths on the different sea routes, 2,026 people have lost their lives in the Mediterranean Sea in 2021. We realize that this is a ridiculously high number. Denying safe routes, forcing the African migrant population onto an unsafe path and forcing them to risk their lives is equivalent to recognizing the faces of these people. That the European Union has managed to articulate in such a short time the reception of more than four million people from Ukraine according to UNHCR, reveals that it has always been possible, that it was only a matter of political will, to welcome those human beings who were in need.

However, someone could ask: why hospitality is a value that European culture would like to regain or preserve?

IV.   Hospitality as a right in Ancient Greece

As Donatella Di Cesare, one of the authors who has paid the most attention to the migratory process, has underlined: "From its origin, «migrating» is not a simple movement, but a complex exchange that takes place in the passage between that subject of the place that it meets abroad, where the ethical-political practice of hospitality is inaugurated" (2017, p. 92).

The definition offered by Di Cesare also finds some support in some classic texts. Thus, perhaps the formulation chosen by Iloneus –Aeneas' companion– to request asylum when they arrive in Carthage is no coincidence. With the following words he addresses Queen Dido:

> We few that you see swam ashore to your beaches. What kind of humans are these? What barbarous sort of a country tolerates conduct like this? Our welcome? They keep us from landing, start up a war and forbid us to take a stepover their borders! Even if you despise humankind and have no fear of mortal arms, be assured gods remember what's holy and what is unholy (*En.*, I, 538 y ss.)

A few verses earlier, Iloneus explains to the queen the misfortune of the Trojans and urges her to feel sorry for "a pious race". He then introduces what will be crucial for the subsequent law of nations, namely, that those who arrive have no intention of causing any harm to the inhabitants of Carthage[16]. The reasoning behind Iloneus' words is that since the Trojans who appear on the shores of Queen Dido have no intention of causing offenses to Carthage, she should allow them to stay following a right recognized by the gods –who do not forget what is fair and unfair. In this context where Aeneas and his family have no intention of causing damage to the land they come to, it is not fair, writes Virgil, that "we are denied shelter on a beach" [*hospitio prohibemur harenae*].

And it is that the *hospitium*, the law, the use, the custom or the right of hospitality was fully extended well before the Roman imperial era. Already in the *Odyssey* the hosts of Agamemnon seek refuge by appealing to this custom:

> (…) Have come as suppliants to thy knees, in the hope that thou wilt five us entertainment [*xeinḗion*], or in other wise make some present [*dōtínēn*], as is the due of strangers [*xénos thémis*]. Nay, mightiest one, reverence the gods; we are off spoils to the beaches. / Violence, pride such as this isn't found in the souls of the conquered!" (*Aeneid.*, I, 527-229).

Thus, the right to hospitality is found in the founding stories of the Greco-Latin tradition: the Iliad and the Odyssey, and the Aeneid. Rome is founded on the figure of strangers, foreigners who wander in the sea, the same sea that, two thousand years later, is closed to other castaways. The right to hospitality, as we have previously, is maintained throughout the European philosophical tradition, in Kant, of course, in the law of nations, but also in its contemporary legal formulations such as the Geneva Convention. In this way, not because of a taste for the classics, literature, or the philosophical tradition, but because of recognizing the impact that all these things have had on the European jurisdiction, it is worth emphasizing the importance of hospitality.

---

[1] "We did not come to annihilate Libya's temples and peoples, / Nor to conduct pillage, rape, or to carry thy suppliants; and Zeus is the avenger of suppliants and strangers –Zeus, the strangers' god– who ever attends upon reverend strangers' (*Od.*, IX, 266-271).

V.   Conclusion

During these first six weeks of war, several articles have been published in the European media that point to this issue that I am highlighting: there has been a change in the management of displaced persons and refugees. However, as Jacques Derrida reminds us, true hospitality is always unconditional, that is, it cannot be subject to the selection or choice of the subject who will be able to take advantage of this practice. Several organizations that have been working with migrants and refugees around the world for years, such as Missing Migrants, Open Arms, have highlighted the hypocrisy of the policies applied during the preceding years on this right to hospitality. However, we have to look at the horizon that this offers us. Being aware what things have been done wrong in the past, and are being done well -or at least better- in the present, allows us to be aware of its possibility. In other words, what social organizations have been working for several years was never impossible.

Finally, we must stop thinking about migratory movements in terms of a crisis, since something that has been repeated for several years cannot be a new event. Being aware of this can help to draw up a program that allows us not to repeat the same mistakes. We are facing a unique opportunity to recover the old tradition of hospitality, to recover te true meaning of hospitality that Derrida never tires of repeating, and that cannot discriminate and choose. Hospitality is granted to the needy, regardless of how similar or different it may be for the receiving State. It is a right that is granted to man, not to the compatriot, to the neighbor. Calculation is not allowed in the practice of hospitality.

References

Benhabib, S. (2004). The Rights of Others. Cambridge University Press. https://doi.org/10.1017/CBO9780511790799

Kant, I. (1998). Sobre la paz perpetua [Perpetual Peace: A Philosophical Sketch]. Translation by Joaquín Abellán. Tecnos.

Virgil. (2007). *Aeneid*. Oxford University Press. Homer. (1945). *Odyssey*. Harvard University Press.

Di Cesare, D. (2017). *Stranieri residenti*. Bollati Boringhieri.

ACNUR, (2019a). *Travesías Desesperadas. Refugiados e Inmigrantes Llegan a Europa ya las Fronteras Europeas*.

ACNUR. (2019b). *Informe anual 2019*.

ACNUR.   (2021). *Operations   Portal. Refugee   situations*.   Recuperado d e https://data2.unhcr.org/en/situations/mediterranean

Caminando Fronteras. (2019). *Vida en la Necrofrontera*. Recuperado de https://caminandofronteras.org/vida-en-la-necrofrontera/

Caminando Fronteras. (5 de enero de 2020). *Caminando Fronteras*. Recuperado de https://caminandofronteras.org/